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**BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Integrate
Procurement Policies and Consider Long-
Term Procurement Plans

R. 06-02-013

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E)
MOTION TO STRIKE TESTIMONY
OUTSIDE THE SCOPE OF THIS PROCEEDING AND
REQUEST FOR EXPEDITED CONSIDERATION**

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March 22, 2007

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I. INTRODUCTION

When the Commission initiated this proceeding, it provided clear guidance as to matters that were, and were not, to be considered. With regard to issues concerning the hybrid market, slice of load proposals and other market structure issues, the Commission explained:

After careful consideration, the following additional issues are not anticipated to be in the scope of this proceeding: ordering a comprehensive review of the effectiveness of the hybrid market structure to meet the Commission's procurement objectives, a review of the slice of load proposal, and defining or reviewing the future structure of the retail market. While we recognize that these issues are related to procurement, we decline to order a comprehensive review of these policies in the scoping of this proceeding at this time.¹

Nothing in the Scoping Memo issued on September 25, 2006 changed this determination. Despite this clear guidance, several intervenors submitted testimony on March 2, 2007

¹ *Order Instituting Rulemaking*, mailed February 23, 2006, at 11.

that discusses at length the hybrid market structure, slice of load proposals and issues regarding the future structure of the retail markets.

PG&E files this motion under Commission Rule 11.1 requesting that the Administrative Law Judge (“ALJ”) strike this testimony because it is clearly outside the scope of this proceeding. In addition, because rebuttal testimony is due in less than three weeks, and because the testimony that should be stricken is so patently beyond the scope of this case, PG&E requests expedited consideration of this motion to strike. Pursuant to Rule 11.1(g) the ALJ should grant PG&E’s motion to strike immediately, without waiting for responses. Alternatively, the ALJ should require responses within five (5) business days and rule as soon as possible thereafter.

II. ARGUMENT

The Commission routinely strikes testimony or proposals that are beyond the scope of issues to be addressed in a proceeding.² Here, the Commission order initiating this proceeding clearly stated that proposals regarding the hybrid market, slice of load and the future structure of retail markets were outside the scope. The Scoping Memo issued in September 2006 did not change this determination, nor did any intervenor request that the Commission expand the scope of this proceeding. Despite this, several intervenors have submitted testimony on these very issues. For example, the Alliance for Retail Energy Markets (“AReM”) has submitted testimony advocating the elimination of

² See e.g. *In re San Diego Gas and Electric*, 76 CPUC2d 386, 390 (1997) (granting IEP motion to strike proposal that “exceed[ed] the limited scope of this proceeding.”).

hybrid markets.³ Constellation, Reliant and Mirant have submitted similar testimony. Constellation and NRG have also submitted testimony supporting a slice-of-load proposal.⁴ All of this testimony has been expressly determined to be outside the scope of this proceeding and should therefore be stricken.⁵ Given the significant number of issues in this proceeding, the overwhelming amount of testimony, and the number of parties and witnesses, these parties should not be permitted to introduce new issues and subjects that are expressly outside the scope of this proceeding. Doing so will only further complicate this proceeding.

In addition to its motion to strike, PG&E is also requesting expedited consideration. Rebuttal testimony is due on April 9th – less than three weeks. There are numerous subjects that are within the scope of this proceeding that PG&E needs to respond to within this short time frame. PG&E needs to know whether it must also respond to the lengthy hybrid market, slice-of-load and market structure testimony that has been submitted by AReM, Constellation, Mirant, Reliant and NRG. Expedited consideration of this motion will ensure that PG&E and the other utilities have sufficient time to respond to the issues that are within the scope of this proceeding, and do not spend time preparing rebuttal testimony on issues that are ultimately determined to be outside the scope. PG&E therefore requests that the ALJ exercise her authority under

³ AReM Testimony at 4-7.

⁴ Constellation Testimony of Mary Lynch at 4, n. 3 (explaining the Constellation's new Wholesale Competitive Procurement proposal is essentially a Slice-of-Load proposal).

⁵ In Appendix A, PG&E identifies the specific testimony it is seeking to strike and the subject matter of the testimony.

Rule 11.1(g) to grant PG&E's motion before any responses are filed. Alternatively, PG&E requests that the ALJ require that responses be submitted within five (5) business days, and that the ALJ rule as soon thereafter as possible.

III. CONCLUSION

For the foregoing reasons, PG&E respectfully requests that:

- (1) Consideration of this motion be expedited and that the ALJ grant the motion to strike as soon as possible, or, alternatively, the ALJ order that responses be submitted within five business days and rule as soon as possible thereafter; and,
- (2) PG&E's motion to strike the testimony identified in Appendix A be granted.

Respectfully submitted,

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APPENDIX A

(Specific Testimony PG&E Seeks to Strike)

Party	Testimony Reference	Subject Matter
Alliance for Retail Energy Markets	AReM, Chapter 1 at 4:18-7:7 (Mara)	Hybrid markets
Constellation Energy Commodities Group, <i>et al.</i>	Prepared Direct Testimony of Mary Lynch (all)	Hybrid markets and slice-of-load proposal
Constellation Energy Commodities Group, <i>et. al.</i> ; Reliant Energy; Mirant California LLC, <i>et al.</i>	Prepared Direct Testimony of Michael Schnitzer (all)	Hybrid markets
NRG Energy, Inc.	Intervenor Testimony of G. Alan Comnes at 15:17-16:5	Slice-of-load proposal

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL OR U.S. MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, CA 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On the 22nd day of March 2007, I served a true copy of:

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E)
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REQUEST FOR EXPEDITED CONSIDERATION**

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for R. 06-02-013 with an e-mail address.

[XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service list for R. 06-02-013 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 22nd day of March, 2007 at San Francisco, California.

/s/

STEPHANIE LOUIE

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